

DEPARTMENT OF INDUSTRIAL RELATIONS
Occupational Safety and Health Standards Board
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INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Section 3203
of the General Industry Safety Orders

Employee Access to Injury and Illness Prevention Program

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

On June 15, 2017, the Occupational Safety and Health Standards Board (Board) adopted the Proposed Petition Decision regarding Petition File No. 562. The petition decision directed Board staff to convene an advisory committee for the purpose of developing a rulemaking proposal to ensure timely employee access to the employer's injury and illness prevention program (IIPP).

Section 3203 *Injury and Illness Prevention Program* does not explicitly state that employees are entitled to receive, review, or copy their employer's IIPP. The current proposal is intended to ensure employee access to the IIPP by specifying who can request such access, what information is to be provided, and a timeframe for requests to be fulfilled. The amendments are necessary to clarify that employees have a right of access to the employer's IIPP, and what that access entails.

This regulatory proposal is intended to provide worker safety at places of employment in California.

Section 3203. Injury and Illness Prevention Program.

Section 3203 requires employers to establish, implement, and maintain an effective IIPP. The section requires employers to identify and correct workplace hazards, develop a means to communicate hazards to employees, ensure employee compliance with provisions of the IIPP, investigate injuries and illnesses, and provide training and instruction to affected employees. The employer must also identify a person (or persons) with the authority and responsibility to implement the IIPP.

The proposed amendments provide means for employees to receive access to their employer's IIPP, if they so choose. The amendments also provide employees the option of obtaining such access through the use of a third party representative. Furthermore, details for providing access

are included, such as a time frame for providing the IIPP, employer protections for repeat requests, and provisions for some employers to provide the required access online. Specifically, subsection 3203(a)(8) is proposed to be added to clarify to employers that employees have the right to access the IIPP as an integral part of an effective IIPP. Ensuring that employees have sufficient access to the employer's IIPP is necessary to: (1) help employees understand how to communicate hazards to their employer, and (2) aid in the understanding of the IIPP and the role of the employee in creating a safe workplace.

Subsection 3203(a)(8)(A) provides definitions for use in complying with the proposed amendments. The definitions for "access" and "designated representative" are based substantially on corresponding definitions found in Section 3204 *Access to Employee Exposure and Medical Records*. A third definition, "written authorization," is also based on information from Section 3204 [see subsection 3204(c)(12)]. The definitions are necessary to aid employers in understanding key terms, which are important for compliance with the proposed amendments.

Subsection 3203(a)(8)(B) requires the employer to provide access to the IIPP using one of two options. The first option, subsection 3203(a)(8)(B)1 (a) and (b) requires the employer to provide a printed copy of the IIPP, free of charge, within five business days of receipt of the request. Where an employee (or designated representative) agrees to receive an electronic copy of the IIPP in lieu of a printed copy, the employer has the option of providing the IIPP electronically. The proposed language is necessary to ensure that employees and their designated representatives have timely access to the IIPP, free of charge.

Subsection 3203(a)(8)(B)1.b reduces the likelihood of repeated requests for an IIPP, which has not been updated, by allowing the employer to charge for additional copies requested within one year of a previous request. Employers are prohibited from charging for an IIPP which has been updated with new information since the last copy was provided, even if the request comes within one year of a previous request. Allowing employers to charge reasonable fees for duplicate copies of the IIPP is necessary to minimize repeated requests.

The second option for providing access to the IIPP only applies to employers whose employees predictably and routinely use electronic means to communicate with coworkers or management and as part of their work duties. Proposed subsection 3203(a)(8)(B)2 allows employers to comply with the proposed access requirements by providing unobstructed access to the IIPP through a company server or website.

Because of the growing trend of businesses toward paperless communication, employers are increasingly likely to provide access to the IIPP using barrier-free electronic means. The requirement is designed to allow employees that do not work at a single workstation with printing capabilities to utilize the online access option as long as the employee predictably and routinely has access to the electronic means necessary to review, email, and print the IIPP.

The second option was developed for businesses whose employees typically use electronic means for communication with management or coworkers and as part of their work duties. The

subsection is necessary to provide reasonable and less burdensome means for ensuring employee access to the IIPP. Employers are required to provide the same information to employees, whether the IIPP is provided via the first or second option.

The proposed language of subsection 3203(a)(8)(C) places limitations on the information an employer is required to provide as part of the IIPP. The language is necessary to inform employers that only the program elements required by subsection 3203(a) are required to be provided for compliance with this subsection, and not the records of any steps taken to implement or maintain the IIPP.

Subsection 3203(a)(8)(D) allows employers with multiple programs to provide only the IIPP (or IIPPs) applicable to the employee requesting access. Allowing employers to provide only the information applicable to the requesting employee is necessary to ensure that the employee is provided with the appropriate and relevant access to the IIPP.

Subsection 3203(a)(8)(E) requires employers to inform employees of their right to access the IIPP. The subsection also requires the employer to establish a procedure for providing such access. Requiring employers to inform employees of their right to access the IIPP and the procedure to obtain such access are necessary to ensure employees can access the information contained in the IIPP.

Subsection 3203(a)(8)(F) informs and clarifies that the proposed amendments are not intended to infringe upon the rights of collective bargaining agents to collectively bargain for more access to safety and health information than is provided by the current proposal. The subsection is necessary to ensure that existing and future collective bargaining rights are not affected by the proposal.

TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS RELIED ON BY THE BOARD

1. Petition 562 submitted by Dan Leacox, received January 27, 2017.
2. Division of Occupational Safety and Health Review of Petition 562, dated April 28, 2017.
3. Occupational Safety and Health Standards Board Decision on Petition 562, dated June 15, 2017.
4. February 13, 2018, list of advisory committee members, attendance sheets, and minutes.

These documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Occupational Safety and Health Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

PETITION

Petitioner: Dan Leacox

File No.: 562

The Board received a petition on January 27, 2017 to amend Section 3203 of the General Industry Safety Orders contained in Title 8 of the California Code of Regulations regarding

requirements for employee access to the IIPP. On June 15, 2017, the Board granted the petition to the extent that the Petitioner's proposal be referred to a representative advisory committee for consideration.

A copy of the petition, the Division's review, and the Board's petition decision are included as Documents Relied Upon.

ADVISORY COMMITTEE

This proposal was developed with the assistance of an advisory committee, which met on February 13, 2018. (A list of advisory committee members, attendance sheets, and minutes are included as Documents Relied Upon.)

FIRE PREVENTION STATEMENT

This proposal does not include fire prevention or protection standards. Therefore, approval of the State Fire Marshal pursuant to Government Code Section 11359 or Health and Safety Code Section 18930(a)(9) is not required.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The proposed regulation will not affect the: (1) creation or elimination of California jobs, (2) creation of new businesses or elimination of existing California businesses, or (3) expansion of existing California businesses, because employers have been required to develop and maintain an IIPP since July 1, 1991.

The proposed amendments clarify that employers must make the IIPP available to employees and their designated representatives, but do not place significant additional requirements on them. Many employers already provide employee access to the IIPP through the availability of printed and/or electronic copies. For employers that do not currently provide such access, they will need to ensure that employees can access a copy of the IIPP directly or through a designated representative, upon request.

The Board estimates that informing employees of the right and procedure to access the IIPP could have a one-time cost impact of up to \$10 per business, and that each printed copy supplied will cost about \$0.25. A limited number of printed copies are anticipated to be requested, however, because many employers already provide access to the IIPP by making it available in employee common areas and/or online.

All employers will need to inform employees of their right to access the IIPP, but the proposal does not prescribe a method for this to be accomplished. Doing so can be as simple as sending a company-wide email or mentioning it during an employee gathering.

BENEFITS OF THE PROPOSED ACTION

The proposal promotes worker safety by ensuring that employees have sufficient access to the employer's IIPP, which helps employees understand how to communicate hazards to their employer and aids in the understanding of the IIPP and the role of the employee in creating a safe workplace. Employees who may have difficulty understanding the IIPP and its implementation, or who may be hesitant to ask a supervisor for clarification of a matter related to the IIPP, now have an explicit right to obtain a copy of the IIPP for review. No significant environmental impact is anticipated from the proposed action.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses/individuals, including the ability of California businesses to compete with businesses in other states. Many employers already provide employee access to the IIPP through the availability of printed and/or electronic copies. For employers that do not currently provide such access, they will need to ensure that employees can access a copy of the IIPP directly or through a designated representative, upon request.

The Board has determined that the proposed amendment may affect small businesses; however, no significant economic impact is anticipated.

REASONABLE ALTERNATIVES TO THE PROPOSAL AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

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